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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,056	02/03/2004	Wendy Michele Kirsh	11845*1	3932
23416	7590	03/30/2005	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP			LAVINDER, JACK W	
P O BOX 2207			ART UNIT	
WILMINGTON, DE 19899			PAPER NUMBER	
			3677	
DATE MAILED: 03/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/772,056

Applicant(s)

KIRSH, WENDY MICHELE

Examiner

Jack W. Lavinder

Art Unit

3677

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-10.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____
13. ☐ Other: _____

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Primary Examiner
Art Unit: 3677

Continuation of 3. NOTE: The changes to the independent claims would not simplify the issues. If amendments to the independent claim were allowed, the 102 rejection would have to be withdrawn and a 103 rejection would have to be applied to claims 1, 2, 3, 4, 5, 8, 9. With regard to claim 10, a new 103 rejection would have to be made if the proposed amendments were entered..

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11. contd. The applicant argues on page 5 of their remarks that Johnson fails to disclose an interchangeable entertainment object that promotes chewing in young children, and the Office Action failed to provide a cite to such a disclosure in the reference. The language being referred to by the applicant is as follows: "wherein the interchangeable entertainment object promotes chewing and provides a visual stimulus to the child" (claim 7). Johnson discloses a jewelry pendant, which includes interchangeable pieces made up of different colors, symbols or letters. Any person of any skill level knows that shiny moving pieces of dangling jewelry promotes visual stimulus and chewing to children. All that is required of the apparatus claim is a device which is capable of promote chewing and visual stimulus to a child. Clearly, the symbols, letters, colors and shape of the jewelry pedant is capable of performing the functions of promoting chewing and visual stimulus to a child. In an apparatus claim, functional recitation are given weight insomuch as to the structure that is implied by the function, i.e., if the device is capable of performing the function, it meets the structural limitations of the claim. The applicant states that Johnson cannot possibly disclose the function of promoting chewing in a child because Johnson's elements pose a dangerous choking hazard for young children. Even though this may be true, it doesn't negate the fact that children will want to chew on the pendant. In fact, it seems that the applicant is implying that children will chew on the pendant since he believes that it may be a choking hazard for the children. The applicant states that since Johnson's jewelry components pose a choking hazard, the reference teaches away from the function of promoting chewing. This is not true, even though the pendant might pose a hazard to young children, it doesn't teach the opposite of promoting chewing. Again the structure of Johnson's pendant is capable of promoting chewing by young childrean, i.e., the colors, letters and symbols and shapes visually stimulate a young child. Once the childs attention is drawn toward the shiny object, young children will then explore the object by placing it in their mouth to suck on and chew on the object. Just because an object is hazardous to young children, doesn't prevent that object from enticing young children to grab the object and chew and suck on the object.